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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,755	03/29/2006	Hiroshi Fukushima	NPR-185	3987
20374 7590 08/27/2009 KUBOVCIK & KUBOVCIK SUITE 1105 1215 SOUTH CLARK STREET ARLINGTON, VA 22202				
EXAMINER MARCECICH, ADAM M				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
08/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/573,755

**Applicant(s)**

FUKUSHIMA ET AL.

**Examiner**

Adam Marcetich

**Art Unit**

3761

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-4, 7 and 10-12.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Leslie Deak/  
Primary Examiner, AU 3761

/Adam Marcetich/  
Examiner, Art Unit 3761

Continuation of 11, does NOT place the application in condition for allowance because: CLAIM AMENDMENTS

The amended claims filed 22 July 2009 are not being entered since they would require further search and consideration. Claims 4, 11 and 12 have been amended to provide for consistency of claim language. The amendments do not change the scope of the claims and are therefore entered.

#### RESPONSE TO ARGUMENTS

Applicant's arguments filed 22 July 2009 have been fully considered but they are not persuasive.

Applicant asserts that the finality of the last Office Action is improper, since the Office now cites Hustad '979 for the same teachings mistakenly cited in the first Action from Hustad '664. Applicant reasons that citing Hustad '664 is not necessitated by amendments to the claims and, when combined with the other prior art cited in the Final Action, effectively constitutes a new ground of rejection that should not have been made final. Examiner notes that the amendments filed 10 February 2009 added the language: "printing directly on an outer surface of said partition wall section of at least one of the container outer members" and "said separation display section being at least partially blocked by contents in the medical container when the partition wall section is separated" to claim 1. Examiner applied new art, Sperko, to show a teaching of a separable partition wall. Examiner applied new grounds of rejection as necessitated by amendment, and therefore the final rejection is proper.

Applicant asserts a disadvantage in terms of time required to resolve a typographical error mistakenly citing Hustad '664 (US 5,064,664) instead of Hustad '979 (US 5,103,979) in the non-final Office Action. Regarding Applicant's disadvantage, Examiner notes that both patents were cited on the PTO-892 form mailed with the non-final Office Action, and Applicant demonstrated an understanding that Hustad '979 was cited as teaching the limitations of a separation display section or means in the response to the non-final Office Action. In other words, the non-final Office Action identified the limitations in Hustad '979.

Applicant submits that Hustad fails to remedy the deficiencies of Sperko, namely a display section, since a display section as proposed by the Office is not required to determine whether medication being administered from a medical container is free from particulate matter. Applicant reasons that Sperko satisfies the requirement of determining whether medication being administered from a medical container is free from particulate matter by the use of a transparent front sheet. Applicant suggests that a display section could obscure particulate matter in the medication and make it difficult to obtain the effect of the invention of Sperko. Examiner notes that Hustad also provides the advantage of showing whether a fluid components have been mixed. That is, Hustad shows whether a fluid, which is not immediately apparent as dispensed, has been introduced. Sperko calls for showing whether liquids have been mixed, since liquids are stored in both upper compartment 22 and lower compartment 23 (Sperko, col. 7, lines 62-65).

Applicant asserts that Brochman fails to remedy the deficiencies of Sperko and Hustad, namely an indicator strip. Applicant reasons that the indicator strip of Brochman provided on the outer surface of the separable partition wall of at least one of the container outer members would not opacify when the partition wall section is separated because the partition wall section is stressed - not the specified indicator strip. Applicant reasons that a user would not be able to recognize that the plural chambers are communicating with each other. Examiner notes that in this rejection, the indicator strip of Brochman is placed on the bag of Sperko. When opened, all components are stressed, since a user needs to apply sufficient force to separate the seal between upper and lower compartments 22 and 23 of Sperko. For example, the operation of opening a bag stresses all components to opacify the indicator strip of Brochman. .